IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1058 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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AMADBHAIISMAILBHAIGHANCHI - Applicant(s)

Versus

SUB-DIVISIONAL MAGISTRATE & 1 - Respondent(s)

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Appearance :
MR HARSHAD K PATEL for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/12/2005

ORAL JUDGMENT

1.Shri Amadbhai Ismailbhai Ghanchi, petitioner has filed this petition challenging the order dated 17/6/2005

passed by the Deputy Secretary, Home Department, respondent no.2 in Externment Appeal No.18 of 2005 as well as order dated 27/1/2005 passed by the Sub Divisional Magistrate, Morbi, respondent no.1 in Externment Case No.7 of 2004 thereby externing the petitioner from Districts of Jamnagar, Bhuj, Rajkot, Rajkot City, Kutch and Surendranagar for a period of two years in the interest of justice.

2. Petition was filed on 9/8/2005. This Court (Coram:S.D.Dave, J.) by order dated 12/8/2005, issued Rule which is returnable within four weeks. Therefore, matter has come up for hearing to this Court.

3. It is the case of the petitioner that authority has issued notice on 19/3/2004 under Section 59(1) of Bombay Police Act, urging about nine offences under the provisions of Bombay Prohibition Act and about thirteen offences under the IPC. It was stated that petitioner is carrying on illegal and anti social activities which affects the society. He is also carrying on activity of manufacturing illegal liquor and therefore committed serious offence in this behalf. Petitioner has filed reply and ultimately the authority i.e. the Sub

Divisional Magistrate, Morbi by his order dated 27/1/2005, pleased to confirm the show cause notice and extern the petitioner from the districts of Jamnagar, Bhuj, Rajkot, Rajkot City, Kutch and Surendranagar for a period of two years.

4. Being aggrieved and dissatisfied with the said order, petitioner has preferred appeal No.18/2005 and the Appellate Authority has also by order dated 17/6/2005 pleased to dismiss the appeal.

5. Being aggrieved and dissatisfied with the said, the petition has filed this application.

6. Mr.H.K.Patel, learned advocate for the petitioner has raised several grounds in this behalf but only one ground is sufficient that after great delay, the authority has passed the order i.e. unexplained delay by the respondent in this behalf. He has invited my attention to the fact that the authority has issued notice on 19/3/2004 whereas order has been passed on 27/1/2005 that is after abut nine months in this behalf. He has stated that it is no doubt true that on 12/4/2005, hearing was fixed but thereafter for one or

other reason, the authority has fixed the hearing on 10/5/2004, 24/5/2004, 31/5/2004, 28/6/2004, 20/9/2004, 22/11/2004 and 9/12/2004 and thereafter the order has been passed on 27/1/2005.

7. The learned counsel has submitted that the contention of delay in passing the order is covered by the judgment of this Court in the case of Balvantsingh @ Nanio Kalyansingh Rajput v. Deputy Commissioner of Police and another, reported in 1999 (2) GLR 1023 and judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

8. On behalf of respondent, learned APP has stated that petitioner has asked for adjournment and therefore, the delay caused. The authority has tried to explain the delay which has been caused is reasonable and said delay was unavoidable in this behalf. Therefore, the order cannot be struck down on the ground of delay.

9. I have considered the facts and circumstances of the case. In view of the judgment of this Court in Special Criminal Application No.1451 of 2005, the contention of

the learned advocate for the petitioner is required to be accepted. The authority could not pass the order.

10.It is not part of this Court that the petitioner may ask for some time but it is is obligatory on the part that order is passed after reasonable time and there is already a judgment of this Court in this behalf.

11.In view of the facts and circumstance of the case, this Court is of the view that delay is not properly explained. In view of the same, order of externment is required to be quashed and set aside. The order, confirming the order of externment is also required to be quashed and set aside.

12.In view of the same petition is allowed. Order of externment dated 27/1/2005 is quashed and set aside and order dated 17/6/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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